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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,873	03/04/2002	Katsuhisa Inoue	220137US0	1799
22850	7590	07/28/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			MITCHELL, GREGORY W	
			ART UNIT	PAPER NUMBER
			1617	
DATE MAILED: 07/28/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/086,873

**Applicant(s)**

INOUE ET AL.

**Examiner**

Gregory W Mitchell

**Art Unit**

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This office action is in response to Applicant's amendment and response filed on April 16, 2004 wherein claims 1-5 have been cancelled and claims 16-20 have been added. Claims 16-20 are pending.

In view of Applicant's amendments and response submitted on April 16, 2004, the rejections of the previous office actions are hereby withdrawn. The following new rejections are made:

#### ***Claim Objections***

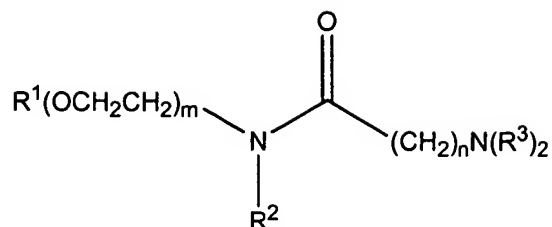
Claims 16 and 17 are objected to because of the following informalities: following the definition of R1 and immediately preceding the definition of R5, an open parenthetical can be found. There is no corresponding closed parenthetical. This objection would be overcome by replacing the open parenthetical with a comma.

#### ***Claim Rejections - 35 USC § 102***

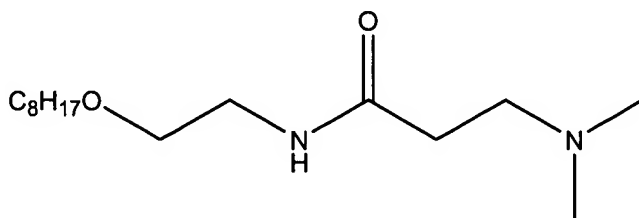
The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Dassanayake et al. (USPN 5,573,726).

Dassanayake et al. discloses a composition comprising a compound of the following formula (see claims 1-9):



For example, when  $m=1$ ,  $n=2$ ,  $R^1$ =octyl,  $R^2$ =H and  $R^3$ =Me, the structure of the compound is identical to that of the instant application wherein  $n=0$ ,  $m=2$ ,  $R^2$ =CH<sub>2</sub>CH<sub>2</sub>,  $R^3$  and  $R^4$  are methyl and  $R^5$ =octyl:



Dassanayake et al. further teaches a composition comprising a compound of the formulas above and citric acid (col. 14, example 17).

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 19 and 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Dassanayake et al. as applied to claims 16-18 above, and further in view of both Kojima et al. (JP8073372) and Mitsumatsu et al. (WO 98/40046).

Dassanayake et al. applies as disclosed above. Dassanayake et al. further teaches that amidoamines of the formula above are effective antimicrobial agents (col.

Art Unit: 1617

5, lines 55-58 and claim 1). Dassanayake et al. does not teach a composition further comprising a fatty alcohol.

Kojima et al. teaches that antimicrobial agents are useful as cosmetics for the treatment of dandruff (abstract).

Mitsumatsu et al. teaches hair conditioning compositions comprising about 0.4% of an amidoamine; from about 0.05-20% by weight of an inorganic or organic acid; and from about 1-15% by weight of a fatty alcohol having 12-22 carbon atoms (abstract, pp. 3-5).

It would have been obvious to one of ordinary skill in the art to formulate a composition comprising about 0.4% of the amidoamine taught by Dassanayake et al. along with 0.05-20% by weight of an inorganic or organic acid; and from about 1-15% by weight of fatty alcohol having 12-22 carbon atoms because 1) amidoamines are taught by Mitsumatsu to be useful as conditioning agents and 2) antimicrobial agents are known to be useful as hair cosmetics, as taught by Kojima et al. One would have been motivated to modify the composition taught by Dassanayake et al. by adding a fatty acid because of an expectancy of success in preparing a composition suitable for not only antimicrobial activity, as taught by Dassanayake et al, but also capable of providing a smooth feel to the hair and provide for ease in combing, as taught by Mitsumatsu (pg. 5, lines 4-6).

### ***Response to Arguments***

Applicant's amendments have remedied the indefiniteness defect of claims 1-5. Accordingly, the 35 USC § 112(2) rejection is hereby withdrawn.

Applicant's arguments, filed April 16, 2004, with respect to the rejection(s) of claim(s) 1-5 under 35 USC §§ 102(b) and 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Dassanayake et al., Kojima et al. and Mitsumatsu.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W Mitchell whose telephone number is 571-272-2907. The examiner can normally be reached on M-F, 8 AM - 4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregory W Mitchell

Art Unit: 1617

Examiner  
Art Unit 1617

gwm

A handwritten signature in black ink, appearing to read "S. Padmanabhan", with a horizontal line drawn underneath the name.

**SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER**